



Health Plan Benefits Group/CBC

DATE: August 29, 2003

TO: Medicare +Choice Organizations
Medicare Cost Plans
Medicare +Choice Demonstrations

FROM: Jean D. LeMasurier /s/
Acting Director

SUBJECT: Improvements to Advertising Guidelines

I am pleased to present you with new guidelines for advertising materials that should improve your ability to market your plans to potential enrollees. These guidelines will be published in Chapter 3 of the Medicare Managed Care Manual. However, since these new guidelines are advantageous to the way you market your plans, we are implementing them now so that you can take advantage of them while preparing for the Fall enrollment campaign.

In particular, the new advertising guidelines significantly reduce the number of disclaimers/disclosures that must be included on your advertising materials. For example, CMS previously required that advertisements include the “lock-in” statement (i.e., the statement that members must use plan providers) and a statement that beneficiaries must continue to pay their Medicare Part B premium. Now, these statements no longer need to be in the text or footnotes of advertisements.

The detailed guidelines are attached. When a requirement listed in the attachment is not a new requirement, we have referenced the current section of Chapter 3 where that requirement can be found.

There will also be changes to the “Must Use/Can’t Use/Can Use” chart in Chapter 3, although this chart is not attached to this memorandum. The changes indicate that with the exception of the “Contract with the Government” statement, the “Must Use” column in the chart does not apply to advertisements. Please keep in mind that while the disclaimers or disclosures contained on the “Must Use/Can’t Use/Can Use” chart are no longer required on advertisements (with the exception of the “Contract with the Government” statement), the Chart still contains language that cannot be used on ads (“Can’t Use”) or that CMS suggests an organization use if the topic is addressed in an ad (“Can Use”).

If you choose to remove any no-longer required disclaimers/disclosures from your advertisements, and if you make no other changes to your advertisements, then you do not need

to send the ad to CMS for review. However, once you make the changes you must send a copy of the version you are using to your Regional Office for its files.

Questions about this memorandum may be directed to your Regional Office Contact or Marketing Specialist. Thank you.

Attachment

Attachment

Guidelines for Advertising Materials

Advertising materials can be defined as materials that are primarily intended to attract or appeal to a potential enrollee. They are intended to be viewed quickly by a potential enrollee and are short in length/duration. Specifically, these advertisements are:

- television ads,
- radio ads,
- banner/banner-like ads,
- outdoor advertising,
- direct mail,
- print ads (newspaper, magazine, flyers, etc.), and,
- internet advertising.

The following definitions apply to some of the ads addressed in this attachment:

- **Outdoor Advertising (ODA):** ODA is marketing material intended to capture the quick attention of a mobile audience passing the outdoor display (e.g., billboards, signs attached to transportation vehicles, etc.). ODA is designed to catch the attention of a person and influence them to call for detailed information on the product being advertised. *(This requirement can currently be found in Chapter 3, Section 30.1, "Operational Items" Item #4.)*
- **Banner Advertisements:** "Banner" advertisements are typically used in television ads, and flash information quickly across a screen with the sole purpose of enticing a prospective enrollee to call the organization for more information. This type of ad does not contain benefit or cost sharing information. *(This requirement can currently be found in Chapter 3, Section 30.1, "Operational Items" Item #10.)*
- **Banner-like Advertisements:** A "banner-like" advertisement can be ODA and is usually in some media other than television, is intended to be very brief and to entice someone to call the organization or to alert someone that information is forthcoming and, like a banner ad, does not contain benefit or cost sharing information. *(This requirement can currently be found in Chapter 3, Section 30.1, "Operational Items" Item #10.)*

The following guidelines apply to advertisements:

A. Language Requirements

1. Disclaimers/Disclosures:

- a.** For banner ads, banner-like ads and ODA, organizations are not required to include any disclaimers or disclosures (e.g., lock-in and premium information) on the ads.
- b.** For all other advertising materials not listed in a. above, organizations must include the statement that the organization contracts with the Federal government. (Suggested language for this disclaimer can be found in the “Must Use/Can’t Use/Can Use” Chart in Chapter 3 - http://cms.hhs.gov/manuals/116_mmc/mc86c03tables.asp).

If the material references benefits/cost sharing, and is being used under the streamlined review process addressed in the “Instructions for the 2004 Contract Year” (<http://cms.hhs.gov/healthplans/letters/>), then the material must also include the disclaimer that the benefits/cost sharing is “pending Federal approval.” With one exception for certain materials (see c. below), no other disclaimers or disclosures (e.g., lock-in and premium information) are required for these advertising materials.

- c.** In addition to the disclaimers required in b. above, flyers and invitations to sales presentations that are used to invite beneficiaries to attend a group session with the intent of enrolling those individuals attending must also include the following two statements:
 - “A sales representative will be present with information and applications.”
 - “For accommodation of persons with special needs at sales meetings, call [insert phone number].”

(This requirement can currently be found in Chapter 3, Section 30.3, “Must Use/Can’t Use/Can Use” Chart.)

- 2. Hours of Operation:** Organizations must list the hours of operation for customer services and other health plan services anywhere that these phone numbers are provided. This requirement does not apply to any numbers included on advertising materials for persons to call for more information. *(This requirement can currently be found in Chapter 3, Section 30.1, “Operational Items” Item #3.)*
- 3. TTY Numbers:** With the exceptions listed below, TTY numbers must appear in conjunction with any other phone numbers in the same font size and style as the other

phone numbers. Organizations can use either their own or State relay services, as long as the number included is accessible from TTY equipment.

(This requirement can currently be found in Chapter 3, Section 30.1, “Special Situations” Item #2.)

Exceptions:

- TTY numbers need not be included on ODA and banner/banner-like ads or in radio ads that include a telephone number.
- With respect to television ads, the TTY number need not be the same font size/style as other phone numbers since it may result in confusion and cause some prospective enrollees to call the wrong phone number. Instead, organizations are allowed to use various techniques to sharpen the differences between TTY and other phone numbers on a television ad (such as using a smaller font size for the TTY number than for the other phone numbers).

(This requirement can currently be found in Chapter 3, Section 30.1, “Special Situations” Item #2.)

4. **Reference to Studies or Statistical Data:** Organizations may refer to results of studies or statistical data in relation to customer satisfaction, quality, cost, etc. as long as specific study details are given. At a minimum, study details that need to be included are: source, dates, sample size, and number of plans surveyed. M+C organizations may not use study or statistical data to directly compare their plan to another. If M+C organizations use study data that includes information on several other M+C organizations, they will not be required to include data on all of the organizations included in the study. However, study details, such as the number of plans included, must be disclosed. Qualified superlatives (e.g., among the best, one of the highest ranked, etc.) may be used. Superlatives (e.g., ranked number one, etc.) may only be used if they are substantiated with supporting data.

(This requirement can currently be found in Chapter 3, Section 30.1, “Other” Item #2.)

5. **Physicians and Other Health Care Providers:**

- a. If the number of physicians and other health care providers is used in an ad, the ad must include only those physicians and providers available to Medicare beneficiaries.
- b. For print ads and direct mail materials:
 - If a total number of physicians and providers is used in the ad, it must separately delineate the number of primary care providers and specialists included.

- If the organization uses the name and/or picture of providers and/or facilities to market itself, the provider information may only be used within the context of informing beneficiaries of providers that are associated with the organization's delivery system.

(This requirement can currently be found in Chapter 3, Section 30.3, “Must Use/Can’t Use/Can Use” Chart.)

6. Preferred Provider Organizations (including PPO Demonstrations) Only:

The following requirements only apply to Internet ads, brochures, and direct mail pieces. They do not apply to television and radio ads, ODA, and banner/banner-like ads.

- **Mandatory Supplemental Benefits:** If a PPO offers benefits, including mandatory supplemental benefits (such as prescription drugs or dental services) that are limited to in-network providers and facilities, marketing materials that mention these benefits must state that not all benefits are available from non-preferred providers.
- **Cost Savings Described in Marketing Materials:** If a PPO states in marketing materials that prospective enrollees may save money if they join the plan, it must acknowledge the added cost of accessing services out-of-network and/or that using services in-network can cost less than using services out-of-network.

(This requirement can currently be found in Chapter 3, Section 30.1, “Preferred Provider Organizations Only” Item #1 and #3.)

B. Formatting Requirements

1. **Font Size Rule:** With the exception listed below, for all written advertising materials footnotes and any text appearing in the advertisement must be the same size font as the commercial message. The term "commercial message" refers to the material which is designed to capture the reader's attention regarding the organization. The term does not refer to the commercial membership (i.e., non-Medicare/Medicaid members) of the organization. The text size is left to the discretion of the organization and can be smaller than size 12-point font, but the commercial message and footnotes must be the same size font.

Exception:

- Information contained in brochures and direct mail pieces must be no smaller than Times New Roman 12-point or equivalent font. *(Detail on this requirement is contained in Chapter 3, Section 30.1, “Editorial Items” Item #1)*
- If an organization publishes a notice to close enrollment (as required in Chapter 2) in the Public Notices section of a newspaper, the organization need not use 12-

point font and can instead use the font normally used by the newspaper for its Public Notices section.

(This requirement can currently be found in Chapter 3, Section 30.1, “Editorial Items” Item #1 and #2.)

NOTE:

There will also be changes to the “Must Use/Can’t Use/Can Use” chart in Chapter 3, although this chart is not attached to this memorandum. The changes indicate that with the exception of the “Contract with the Government” statement, the “Must Use” column in the chart does not apply to advertisements. Please keep in mind that while the disclaimers or disclosures contained on the “Must Use/Can’t Use/Can Use” chart are no longer required on advertisements (with the exception of the “Contract with the Government” statement), the Chart still contains language that cannot be used on ads (“Can’t Use”) or that CMS suggests an organization use if the topic is addressed in an ad (“Can Use”).